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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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CORP COMMISSION
DOCKET CONTROLCOMMISSIONERSSUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

IN THE MATTER OF:

CONCORDIA FINANCING COMPANY, LTD,
a/k/a "CONCORDIA FINANCE,"

ER FINANCIAL & ADVISORY SERVICES, LLC,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA WANZEK,
husband and wife.

Respondents.

DOCKET NO. S-20906A-14-0063

ORIGINAL

SIXTH
PROCEDURAL ORDER
(Grants Motion)

BY THE COMMISSION:

On February 27, 2014, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action ("Notice") against Concordia Financing Company, Ltd, a/k/a Concordia Finance ("Concordia"), ER Financial & Advisory Services, LLC ("ER"), Lance Michael Bersch, and David John Wanzek and Linda Wanzek, husband and wife (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of investment contracts and promissory notes within or from Arizona.

The spouse of David John Wanzek, Linda Wanzek ("Respondent Spouse"), is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

The Respondents were duly served with copies of the Notice.

1 On March 6, 2014, Respondents ER, Lance Michael Bersch and David John Wanzek filed a
2 Request for Hearing. On March 14, 2014, Respondent Linda Wanzek filed a Request for Hearing.

3 On March 17, 2014, by Procedural Order, a pre-hearing conference was scheduled for April
4 10, 2014.

5 On March 26, 2014, Respondent Concordia filed a Request for Hearing.

6 On March 27, 2014, by Procedural Order, the pre-hearing conference scheduled for April 10
7 2014, was affirmed, with notice issued to Respondent Concordia.

8 On April 4, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda
9 Wanzek (collectively the "ER Respondents") filed a Motion to Dismiss and Answer ("Motion").

10 On April 9, 2014, Respondent Concordia filed an Answer.

11 On April 10, 2014, at the pre-hearing conference, the parties appeared through counsel and
12 requested oral argument regarding the Motion to Dismiss. The parties further proposed a schedule
13 for filing motions prior to oral argument.

14 On April 15, 2014, by Procedural Order, oral argument and a status conference were
15 scheduled to commence on May 21, 2014. It was further ordered that Respondent Concordia shall
16 file any Motion to Dismiss by April 25, 2014, the Division shall file its Response to the Motions to
17 Dismiss by May 9, 2014, and the Respondents shall file any Reply by May 16, 2014.

18 On April 25, 2014, Respondent Concordia filed its Joinder to Motion to Dismiss of
19 Respondents ER Financial & Advisory Services, LLC, Lance Michael Bersh, David John Wanzek
20 and Linda Wanzek.

21 On May 5, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda
22 Wanzek filed Acknowledgments of Possible Conflicts.

23 On May 9, 2014, the Division filed its Response to Motion to Dismiss by All Respondents
24 ("Response").

25 On May 16, 2014, Respondents ER, Lance Michael Bersch, David John Wanzek, and Linda
26 Wanzek filed their Reply in Support of Motion to Dismiss ("Reply").
27
28

1 On May 21, 2014, oral argument and a status conference were held. The parties appeared
2 through counsel and oral argument was presented. The Motion was taken under advisement and a
3 schedule was proposed for the parties to submit supplemental citations.

4 On May 22, 2014, the Division filed its Supplemental Citation of Authorities.

5 On May 29, 2014, Respondents Concordia, ER, Lance Michael Bersch, David John Wanzek
6 and Linda Wanzek filed their Joint Supplemental Citation of Authorities.

7 On August 13, 2014, by Procedural Order, it was found that the Respondents had not
8 established dismissal to be appropriate and that it was necessary and proper to proceed with the
9 Respondents' request for a hearing. Accordingly, a prehearing conference was scheduled on
10 September 2, 2014.

11 On September 2, 2014, a pre-hearing conference was held. The parties appeared through
12 counsel. The scheduling of a hearing was discussed. Counsel for the ER Respondents stated they
13 would be filing a special action regarding the motion to dismiss. Counsel for the ER Respondents
14 requested that part of the hearing be held in the Lake Havasu area to accommodate witnesses for the
15 ER Respondents. This request was denied. After much discussion, a commencement date for the
16 hearing was agreed to by the parties.

17 On September 2, 2014, by Procedural Order, a hearing was scheduled to commence on May
18 11, 2015.

19 On January 5, 2015, the Division filed a Motion to Quash Discovery Demands by the ER
20 Respondents. The Division asserts that on November 24, 2014, the Division was served by the ER
21 Respondents with a "First Request for Production of Documents," a "First Set of Non-Uniform
22 Interrogatories," a "First Set of Requests for Admissions," a "Notice of 30(b)(6) Deposition," and a
23 "Notice of 30(b)(6) Deposition of Gary R. Clapper." The Division contends that the discovery
24 demands by the ER Respondents should be quashed because: discovery in this proceeding is
25 governed by the Administrative Procedures Act and the Commission's Rules, not the Arizona Rules
26 of Civil Procedure; the ER Respondents have not demonstrated a reasonable need for the information
27 they demand; the discovery demands include information and documents that are privileged and/or
28 made confidential by statute; and the discovery demands are unreasonably overbroad, unduly

1 burdensome and oppressive.

2 No objections to the motion have been filed. Accordingly, the Division's Motion should be
3 granted. However, in light of the ER Respondents' efforts to obtain discovery, the parties' exchange
4 of Witness Lists and copies of Exhibits should be accelerated.

5 Subsequent to the issuance of the September 2, 2014 Procedural Order, the Commission
6 scheduled an Open Meeting on May 12, 2015. As such, this date should no longer be reserved for an
7 additional day of hearing.

8 IT IS THEREFORE ORDERED **granting the Division's Motion to Quash Discovery**
9 **Demands** by the ER Respondents. The discovery demands served upon the Division by the ER
10 Respondents on November 24, 2014, are hereby quashed.

11 IT IS FURTHER ORDERED that **the Division and Respondents shall exchange copies of**
12 **their Witness Lists and copies of the Exhibits by March 12, 2015**, with courtesy copies provided
13 to the presiding Administrative Law Judge

14 IT IS FURTHER ORDERED that a **hearing shall remain scheduled to commence on May**
15 **11, 2015, at 10:00 a.m., at the Commission's offices, 1200 West Washington Street, Hearing**
16 **Room No. 1, Phoenix, Arizona.**

17 IT IS FURTHER ORDERED that **the parties shall also set aside May 13-15, and 18-22,**
18 **2015, for additional days of hearing, if necessary.**

19 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
20 Communications) is in effect and shall remain in effect until the Commission's Decision in this
21 matter is final and non-appealable.

22 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
23 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
24 *pro hac vice*.

25 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
26 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
27 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
28 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is

1 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
2 Administrative Law Judge or the Commission.

3 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter
4 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
5 ruling at hearing.

6 DATED this 26TH day of January, 2015.

7
8 
9 MARK PRENY
ADMINISTRATIVE LAW JUDGE

10
11 Copies of the foregoing mailed/delivered
this 26TH day of January, 2015, to:

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